

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 05, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DIANA M.,¹

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner
of Social Security,

Defendant.

No. 4:19-CV-5250-EFS

**ORDER DENYING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION
AND GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions.²

Plaintiff Diane M. appeals the denial of benefits by the Administrative Law Judge (ALJ). She alleges the ALJ erred by 1) improperly weighing the medical opinions, 2) improperly determining that some impairments were not severe, 3) discounting Plaintiff's symptom reports, 4) improperly determining that the impairments did

¹ To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or by "Plaintiff." See LCivR 5.2(c).

² ECF Nos. 12 & 13.

not meet or equal a listing, and 5) improperly determining steps four and five based on an incomplete hypothetical. In contrast, Defendant Commissioner of Social Security asks the Court to affirm the ALJ's decision finding Plaintiff not disabled. After reviewing the record and relevant authority, the Court denies Plaintiff's Motion for Summary Judgment, ECF No. 12, and grants the Commissioner's Motion for Summary Judgment, ECF No. 13.

I. Five-Step Disability Determination

A five-step sequential evaluation process is used to determine whether an adult claimant is disabled.³ Step one assesses whether the claimant is currently engaged in substantial gainful activity.⁴ If the claimant is engaged in substantial gainful activity, benefits are denied.⁵ If not, the disability-evaluation proceeds to step two.⁶

Step two assesses whether the claimant has a medically severe impairment, or combination of impairments, which significantly limits the claimant's physical

³ 20 C.F.R. §§ 404.1520(a), 416.920(a).

⁴ *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

⁵ *Id.* §§ 404.1520(b), 416.920(b).

⁶ *Id.* §§ 404.1520(b), 416.920(b).

1 or mental ability to do basic work activities.⁷ If the claimant does not, benefits are
2 denied.⁸ If the claimant does, the disability-evaluation proceeds to step three.⁹

3 Step three compares the claimant's impairments to several recognized by the
4 Commissioner to be so severe as to preclude substantial gainful activity.¹⁰ If an
5 impairment meets or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled.¹¹ If an impairment does not, the disability-
7 evaluation proceeds to step four.

8 Step four assesses whether an impairment prevents the claimant from
9 performing work she performed in the past by determining the claimant's residual
10 functional capacity (RFC).¹² If the claimant is able to perform prior work, benefits
11 are denied.¹³ If the claimant cannot perform prior work, the disability-evaluation
12 proceeds to step five.

13 Step five, the final step, assesses whether the claimant can perform other
14 substantial gainful work—work that exists in significant numbers in the national
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16 ⁷ 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

17 ⁸ *Id.* §§ 404.1520(c), 416.920(c).

18 ⁹ *Id.* §§ 404.1520(c), 416.920(c).

19 ¹⁰ *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

20 ¹¹ *Id.* §§ 404.1520(d), 416.920(d).

21 ¹² *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

22 ¹³ *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

economy—considering the claimant’s RFC, age, education, and work experience.¹⁴
 If so, benefits are denied. If not, benefits are granted.¹⁵

The claimant has the initial burden of establishing entitlement to disability benefits under steps one through four.¹⁶ At step five, the burden shifts to the Commissioner to show that the claimant is not entitled to benefits.¹⁷

II. Factual and Procedural Summary

Plaintiff filed Title II and XVI applications, alleging a disability onset date of July 1, 2011.¹⁸ Her claim was denied initially and upon reconsideration.¹⁹ A video administrative hearing was held before Administrative Law Judge Glenn Meyers.²⁰

In denying Plaintiff’s disability claims, the ALJ made the following findings:

- Plaintiff’s date last insured was September 30, 2011;
- Step one: Plaintiff had not engaged in substantial gainful activity since July 1, 2011, the alleged onset date;

¹⁴ 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497-98 (9th Cir. 1984).

¹⁵ 20 C.F.R. §§ 404.1520(g), 416.920(g).

¹⁶ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

¹⁷ *Id.*

¹⁸ AR 192-205.

¹⁹ AR 121-27 & 132-43.

²⁰ AR 35-66.

- Step two: Plaintiff had the following medically determinable severe impairments: depressive disorder, anxiety disorder, learning disorder, post-traumatic stress disorder (PTSD), and attention deficit disorder (ADD);
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments;
- RFC: Plaintiff had the RFC to perform a full range of work at all exertional levels with the following nonexertional limitations:

[Plaintiff] is capable of engaging in unskilled, routine tasks in two-hour increments. She can have incidental superficial contact [with the] public. She is capable of working in proximity to but not in coordination with co-workers and can have occasional contact with supervisors. [Plaintiff] will be off task at work up to 10% of the time while still meeting minimum production requirements of the job. She will be absent from work up to 6 unscheduled absences per year.

- Step four: Plaintiff could perform past relevant work as an agricultural produce sorter and line attendant; and
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as industrial cleaner, kitchen helper, and laundry worker II.²¹

²¹ AR 17-34.

1 When assessing the medical-opinion evidence, the ALJ gave:

- 2 • significant weight to John Robinson, Ph.D.'s reviewing opinion and
- 3 part of Gregory Sawyer, M.D., Ph.D.'s examining opinion; and
- 4 • little weight to the remainder of Dr. Sawyer's examining opinion,
- 5 Phillip Barnard, Ph.D.'s examining opinion, Monica Orellana's
- 6 opinion, and Maria Castillo, ARNP's treating opinion.²²

7 The ALJ also found that Plaintiff's medically determinable impairments

8 could reasonably be expected to cause some of the alleged symptoms, but that her

9 statements concerning the intensity, persistence, and limiting effects of those

10 symptoms were not entirely consistent with the medical evidence and other

11 evidence in the record.²³

12 Plaintiff requested review of the ALJ's decision by the Appeals Council,

13 which denied review.²⁴ Plaintiff timely appealed to this Court.

14 **III. Standard of Review**

15 A district court's review of the Commissioner's final decision is limited.²⁵ The

16 Commissioner's decision is set aside "only if it is not supported by substantial

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19 ²² AR 27-28.

20 ²³ AR 25-26.

21 ²⁴ AR 1-6.

22 ²⁵ 42 U.S.C. § 405(g).

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1 evidence or is based on legal error.”²⁶ Substantial evidence is “more than a mere
2 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
3 mind might accept as adequate to support a conclusion.”²⁷ Moreover, because it is
4 the role of the ALJ and not the Court to weigh conflicting evidence, the Court
5 upholds the ALJ’s findings “if they are supported by inferences reasonably drawn
6 from the record.”²⁸ The Court considers the entire record as a whole.²⁹

7 Further, the Court may not reverse an ALJ decision due to a harmless
8 error.³⁰ An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
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13 ²⁶ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

14 ²⁷ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

15 ²⁸ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

16 ²⁹ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must
17 consider the entire record as whole, weighing both the evidence that supports and
18 the evidence that detracts from the Commissioner's conclusion,” not simply the
19 evidence cited by the ALJ or the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th
20 Cir. 1998) (“An ALJ's failure to cite specific evidence does not indicate that such
21 evidence was not considered[.]”).

22 ³⁰ *Molina*, 674 F.3d at 1111.
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nondisability determination.”³¹ The party appealing the ALJ’s decision generally bears the burden of establishing harm.³²

IV. Analysis

A. Step Two (Severe Impairment): Plaintiff fails to establish consequential error.

Plaintiff contends the ALJ erred at step two by failing to identify her endometriosis, fibromyalgia and other physical impairments, and her borderline intellectual functioning as severe.

At step two of the sequential process, the ALJ must determine whether the claimant suffers from a “severe” impairment, i.e., one that significantly limits her physical or mental ability to do basic work activities.³³ To show a severe mental impairment, the claimant must first prove the existence of a mental impairment by providing medical evidence consisting of signs, symptoms, and laboratory findings.³⁴ If a mental impairment is proven, the ALJ then considers whether the medically determinable impairment is severe or not severe. A medically determinable impairment is not severe if the “medical evidence establishes only a

³¹ *Id.* at 1115 (quotation and citation omitted).

³² *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

³³ 20 C.F.R. § 416.920(c).

³⁴ *Id.* § 416.921 (recognizing the claimant’s statement of symptoms alone will not suffice).

1 slight abnormality or a combination of slight abnormalities which would have no
2 more than a minimal effect on an individual's ability to work."³⁵ Basic mental work
3 abilities include understanding, carrying out, and remembering simple
4 instructions, dealing with changes in a routine work setting, and responding
5 appropriately to supervision, coworkers, and usual work situations.³⁶

6 Step two is "a de minimus screening device [used] to dispose of groundless
7 claims."³⁷ And "[g]reat care should be exercised in applying the not severe
8 impairment concept."³⁸

9 Here, the ALJ found Plaintiff had the severe impairments of depressive
10 disorder, anxiety disorder, learning disorder, PTSD, and ADD.³⁹ Yet, the ALJ
11 found that Plaintiff's endometriosis, limitations from methyl tetra hydro folate, low
12 back pain, right shoulder impairment, and obesity were non-severe impairments,
13 and that Plaintiff's fibromyalgia was not a medically determinable impairment.
14 These findings are a reasonable interpretation of the medical record and supported
15 by substantial evidence. Plaintiff's endometriosis was improved with surgery, and
16 imaging indicated that Plaintiff's lumbar spine issue was mild. In addition, the
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18 ³⁵ SSR 85-28 at *3.

19 ³⁶ 20 C.F.R. § 416.921.

20 ³⁷ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

21 ³⁸ SSR 85-28.

22 ³⁹ AR 22.

1 ALJ reasonably found Plaintiff's diagnosed fibromyalgia was not a medically
2 determinable impairment given that the record did not reflect tender-point testing
3 or repeated manifestations of six or more fibromyalgia symptoms.

4 While Plaintiff was diagnosed with borderline intellectual functioning, any
5 error by the ALJ in failing to identify this as a severe impairment is harmless. The
6 ALJ found Plaintiff had a severe learning disorder. The RFC already limited
7 Plaintiff to unskilled, routine tasks for which she needed only occasional contact
8 with her supervisors and permitted being off task up to 10 percent of the time so
9 long as she met the job's minimum production requirements.⁴⁰ Plaintiff fails to
10 establish what additional work-related functional limitations were to be included
11 in the RFC.

12 Plaintiff fails to establish consequential step-two error.

13 **B. Medical Opinions: Plaintiff fails to establish consequential error.**

14 Plaintiff challenges the ALJ's weighing of the medical opinions of Dr.
15 Sawyer, Dr. Barnard, and Ms. Castillo. As discussed below, the Court finds
16 Plaintiff fails to establish that the ALJ consequentially erred when weighing the
17 medical opinions.

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19 ⁴⁰ See *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008) (“[A]n ALJ’s
20 assessment of a claimant adequately captures restrictions related to concentration,
21 persistence, or pace where the assessment is consistent with restrictions identified
22 in the medical testimony.”).

1 1. Standard

2 The weighing of medical opinions is dependent upon the nature of the
3 medical relationship, i.e., 1) a treating physician, 2) an examining physician who
4 examines but did not treat the claimant, and 3) a reviewing physician who neither
5 treated nor examined the claimant.⁴¹ Generally, more weight is given to the
6 opinion of a treating physician than to an examining physician's opinion and both
7 treating and examining opinions are to be given more weight than the opinion of a
8 reviewing physician.⁴²

9 When a treating physician's or evaluating physician's opinion is not
10 contradicted by another physician, it may be rejected only for "clear and
11 convincing" reasons, and when it is contradicted, it may be rejected for "specific
12 and legitimate reasons" supported by substantial evidence.⁴³ A reviewing
13 physician's opinion may be rejected for specific and legitimate reasons supported by
14 substantial evidence, and the opinion of an "other" medical source⁴⁴ may be
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16 ⁴¹ *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

17 ⁴² *Id.*; *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

18 ⁴³ *Lester*, 81 F.3d at 830.

19 ⁴⁴ *See* 20 C.F.R. § 404.1502 (For claims filed before March 27, 2017, acceptable
20 medical sources are licensed physicians, licensed or certified psychologists, licensed
21 optometrists, licensed podiatrists, qualified speech-language pathologists, licensed
22 audiologists, licensed advanced practice registered nurses, and licensed physician
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1 rejected for specific and germane reasons supported by substantial evidence.⁴⁵ The
2 opinion of a reviewing physician serves as substantial evidence if it is supported by
3 other independent evidence in the record.⁴⁶

4 2. Dr. Sawyer

5 In March 2015, Dr. Sawyer conducted a psychiatric evaluation.⁴⁷ Dr. Sawyer
6 diagnosed Plaintiff with major depressive disorder (moderate, recurrent, and
7 without psychotic features) and psychotic disorder (rule out). He opined that
8 Plaintiff would have difficulty attempting to maintain effective social interactions
9 on a consistent and independent basis with supervisors, coworkers, and the public;
10 attempting to sustain concentration and persist in work-related activity at a
11 reasonable pace; attempting to maintain regular attendance in the workplace;
12 attempting to complete a normal workday or workweek without interruptions; and
13 attempting to deal with the usual stresses encountered in the workplace.

14 The ALJ gave significant weight to Dr. Sawyer's opinion that Plaintiff could
15 understand, remember, carry out, and remember one or two step instructions;
16 perform simple repetitive tasks; and accept instructions from supervisors, and that

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18 assistants within their scope of practice—all other medical providers are “other”
19 medical sources.).

20 ⁴⁵ *Molina*, 674 F.3d at 1111; *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009).

21 ⁴⁶ *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

22 ⁴⁷ AR 768-74.
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1 she would have some difficulty with social interactions.⁴⁸ In comparison, the ALJ
2 gave little weight to Dr. Sawyer's opinion that Plaintiff could complete complex and
3 detailed tasks because the evidence, namely Dr. Barnard's testing, revealed that
4 Plaintiff would have difficulty with complex tasks.⁴⁹ In addition, the ALJ
5 discounted Dr. Sawyer's opinion that Plaintiff would have difficulty dealing with
6 the usual stresses encountered in the workplace because there was no evidence
7 supporting this finding and such was inconsistent with Plaintiff's ability to manage
8 the stress of raising four children.⁵⁰

9 Plaintiff argues the ALJ failed to address Dr. Sawyer's findings that
10 Plaintiff would have difficulty sustaining concentration and persisting in work-
11 related activity at a reasonable pace, maintaining regular attendance, and
12 completing a normal workday or workweek without interruptions. Plaintiff also
13 argues that her ability to parent her children does not correlate to a finding that
14 she is able to persist in a work setting. Plaintiff fails to establish consequential
15 error.

16 First, the ALJ does not consequentially error if he does not discuss all
17 aspects of an opinion so long as the ALJ's overall analysis and findings sufficiently
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20 ⁴⁸ AR 27.

21 ⁴⁹ *Id.*

22 ⁵⁰ *Id.*

1 allow the Court to conduct a meaningful review.⁵¹ Here, in regard to Plaintiff's
2 abilities to concentrate and persist, the ALJ gave significant weight to Dr.
3 Robinson's opinion that Plaintiff was able to maintain a schedule and complete a
4 normal workweek, and the ALJ gave little weight to Ms. Castillo's opinion that
5 Plaintiff would miss three days of work per month. The ALJ had conflicting
6 medical opinions as to Plaintiff's abilities to concentrate and persist. Considering
7 the medical evidence and medical opinions, the ALJ's finding that Plaintiff could
8 sustain unskilled, routine tasks for two-hour increments, albeit being off-task up to
9 10 percent of the time while meeting minimum production requirements, in
10 conjunction with the RFC's social limitations, is a rational finding supported by
11 substantial evidence.

12 Second, as the ALJ mentioned, Plaintiff cares for her four children, two of
13 whom have physical and/or mental-health challenges. The ALJ reasonably found
14 Plaintiff's ability to care for her four children inconsistent with Dr. Sawyer's
15 opinion that Plaintiff would have difficulty dealing with the usual stresses
16 encountered in the workplace.⁵² Unlike Dr. Sawyer, the ALJ reviewed the entire
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18 ⁵¹ See, e.g., *Molina*, 674 F.3d at 1121 (“[I]f an ALJ has provided well-supported
19 grounds for rejecting testimony regarding specified limitations, we cannot ignore
20 the ALJ's reasoning and reverse the agency merely because the ALJ did not
21 expressly discredit each witness who described the same limitations.”).

22 ⁵² AR 27.
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1 record, which included records indicating that Plaintiff was able to handle the
2 stress occasioned by raising children, including attending appointments with them
3 and assisting with school.⁵³ While home activities and child-care do not necessarily
4 involve skills that are transferable to the work setting,⁵⁴ the ALJ reasonably found
5 on this record that Plaintiff's care for her four children required functional abilities
6 that were inconsistent with Dr. Sawyer's opinion that Plaintiff would have
7 difficulty dealing with the usual stresses encountered in the workplace. Moreover,
8 Ms. Castillo opined that Plaintiff had no limitation with the "ability to respond
9 appropriately to changes in the work setting."⁵⁵ On this record, the ALJ rationally
10 partially discounted Dr. Sawyer's opinion.

11 3. Dr. Barnard

12 In January 2014, Dr. Barnard conducted psychological testing and a clinical
13 interview for the purpose of assessing whether Plaintiff needed accommodation
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15 ⁵³ See AR 603 ("Talking helps me see that I am a good mom, and the teacher's[sic]
16 at my daughter's school think so too. I am always right on it whatever she needs.");
17 AR 548 ("[S]he showed appropriate parenting skills during the session with her
18 child/niece."); AR 599 ("Therapist validates [Plaintiff's] parenting skills and ability
19 to interact with her children in such a manner as to coach them rather than lecture
20 and direct.").

21 ⁵⁴ *Trevizo v. Berryhill*, 871 F.3d 664, 675-76 (9th Cir. 2017).

22 ⁵⁵ AR 893.
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1 with her schooling.⁵⁶ Dr. Barnard diagnosed Plaintiff with a specific learning
2 disorder (impairments in reading and written expression) and assessed her with
3 borderline intellectual functioning. Dr. Barnard opined that Plaintiff needed to be
4 provided audio materials for text that she was required to read and to be permitted
5 to use a calculator for taking tests involving mathematics.

6 The ALJ gave little weight to Dr. Barnard's opinion because it related to
7 learning and school—not employment—but the ALJ considered Dr. Barnard's
8 objective findings.⁵⁷ An ALJ is not required to provide reasons for rejecting
9 statements within medical records when those records do not reflect physical or
10 mental limitations or otherwise provide information about the ability to work.⁵⁸

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12 ⁵⁶ AR 802-06.

13 ⁵⁷ AR 27.

14 ⁵⁸ See, e.g., *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1223 (9th Cir. 2010)
15 (recognizing that where a physician's report did not assign any specific limitations
16 or opinions regarding the claimant's ability to work "the ALJ did not need to
17 provide 'clear and convincing reasons' for rejecting [the] report because the ALJ did
18 not reject any of [the report's] conclusions"); 20 C.F.R. § 404.1527(a)(1) ("Medical
19 opinions are statements from acceptable medical sources that reflect judgments
20 about the nature and severity of your impairment(s), including your symptoms,
21 diagnosis and prognosis, what you can still do despite your impairment(s), and
22 your physical or mental restrictions.").

1 Here, Dr. Barnard opined that Plaintiff's intellectual and learning disorders
 2 required accommodation at school. Plaintiff fails to establish that her past work or
 3 the identified gainful work necessitate similar accommodation for audio materials
 4 or the use of a calculator.⁵⁹ While Plaintiff submits that Dr. Barnard's findings
 5 indicate that Plaintiff is unable to concentrate or persist at the workplace, the ALJ
 6 reasonably interpreted Dr. Barnard's opinion as not offering functional work
 7 limitations.

8 4. Ms. Castillo

9 Ms. Castillo was Plaintiff's primary care provider. In September 2016, Ms.
 10 Castillo, along with therapist Loveroop Bath, opined that Plaintiff was:

- 11 • mildly limited in her abilities to remember locations and work-like
 12 procedures, understand and remember detailed instructions, sustain an
 13 ordinary routine without special supervision, and ask simple questions or
 14 request assistance;
- 15 • moderately limited in her ability to work in coordination with or
 16 proximity to others without being distracted by them;

19 ⁵⁹ See Dictionary of Occupational Titles (DOT) Numbers 381.387-018 (industrial
 20 cleaner), 318.687-010 (kitchen helper), and 361.685-018). See also *Valentine v.*
 21 *Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009) (The RFC is defective
 22 where it "fails to take into account a claimant's limitations.").

- markedly limited in her abilities to maintain attention and concentration for extended periods, perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; interact appropriately with the general public; and set realistic goals or make plans independently of others; and
- severely limited in her ability to carry out detailed instructions.⁶⁰

Ms. Castillo also opined that Plaintiff had mild restrictions with activities of daily living and moderate difficulties in maintaining social functioning and concentration, persistence, or pace. She opined that Plaintiff would be off-task 12-20 percent of the work week and that she would miss 3 days of work per month.

The ALJ gave little weight to Ms. Castillo's opinion because it was not supported by the accompanying rationale or her treatment notes.⁶¹ Individual medical opinions are preferred over check-box reports.⁶² An ALJ may permissibly reject check-box reports that do not contain any explanation of the bases for their conclusions.⁶³ However, if treatment notes are consistent with the opinion, a check-

⁶⁰ AR 391-97.

⁶¹ AR 27.

⁶² *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *Bray*, 554 F.3d at 1228 (recognizing that a medical opinion may be rejected if it is conclusory or inadequately supported).

⁶³ *Garrison*, 759 F.3d at 1014 n.17.

1 box report may not automatically be rejected.⁶⁴ Here, the ALJ's analysis in the
 2 paragraph related to Ms. Castillo was barebones. Yet, the ALJ rationally found
 3 that Ms. Castillo's marked and severe limitations were not explained by Ms.
 4 Castillo's comments contained in the accompanying medical report. The medical
 5 report mentioned that Plaintiff had ongoing sadness, a social inability to function
 6 in a group environment, crying spells, emotional outbreaks, and chronic fatigue.⁶⁵
 7 Why these symptoms resulted in such marked and severe limitations was not
 8 explained by the medical report or by treatment notes. Ms. Castillo herself did not
 9 author any treatment notes contained in the record. However, as the primary care
 10 provider, she received a copy of many of the records. The ALJ discussed some of
 11 Plaintiff's therapy and intake notes:

- 12 • "[N]otes from [Plaintiff's] therapist documented that [Plaintiff]
 13 was cooperative and made good eye contact. She was alert,
 14 oriented times three, and had coherent goal directed speech.
 Her mood was depressed and anxious and her affect was
 blunted." AR 25-26 (citing AR 377, 388, & 533).
- 15 • "At a visit with her therapist, [Plaintiff] reported that she was
 16 taking Zoloft as prescribed. She reported having no depression,
 17 no racing thoughts, and no anxiety. Her therapist noted that
 18 [Plaintiff] was in a happy mood, feeling confident and seemed
 like she was doing well. [Plaintiff] reported that medication had
 helped her mood 'a lot.'" AR 26 (citing AR 385, 418, & 450).

20 ⁶⁴ *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004);
 21 *Garrison*, 759 F.3d at 1014.

22 ⁶⁵ AR 896.

- “[Plaintiff] reported that she had been physically and emotionally abused in the past, but feels like she was ‘over it.’ She denied experiencing any nightmares or flashbacks. She also reported that she ‘sometimes felt anxious.’ She reported her anxiety came ‘out of nowhere’ but was rare, happening ‘maybe two times a month.’” AR 26 (citing AR 899).

The treatment notes reflect that Plaintiff’s mental-health symptoms, particularly her mood, ability to focus, and fatigue, waxed and waned depending on whether Plaintiff took medication and participated in therapy. After considering the conflicting medical evidence, the ALJ reasonably found Ms. Castillo’s marked and severe limitations were inconsistent with the treatment notes and not supported by accompanying rationale.⁶⁶ These were specific and germane reasons supported by substantial evidence to discount Ms. Castillo’s opinion. Moreover, the RFC reasonably incorporated Plaintiff’s supported functional limitations by limiting Plaintiff to unskilled, routine tasks with incidental superficial contact with the public, no coordinated work with co-workers, occasional contact with supervisors,

⁶⁶ See *Lingenfelter*, 504 F.3d at 1042 (recognizing that a medical opinion is evaluated as to the amount of relevant evidence that supports the opinion, the quality of the explanation provided in the opinion, and the consistency of the medical opinion with the record as a whole).

1 off-taskness up to 10 percent of the time while meeting minimum production
2 requirements, and up to 6 unscheduled absences per year.⁶⁷

3 **C. Plaintiff's Symptom Reports: Plaintiff fails to establish**
4 **consequential error.**

5 Plaintiff argues the ALJ failed to provide valid reasons for rejecting her
6 symptom reports. When examining a claimant's symptom reports, the ALJ must
7 make a two-step inquiry. "First, the ALJ must determine whether there is objective
8 medical evidence of an underlying impairment which could reasonably be expected
9 to produce the pain or other symptoms alleged."⁶⁸ Second, "[i]f the claimant meets
10 the first test and there is no evidence of malingering, the ALJ can only reject the
11 claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific,
12 clear and convincing reasons' for the rejection."⁶⁹ Here, the ALJ found Plaintiff's
13 statements concerning the intensity, persistence, and limiting effects of her
14 symptoms inconsistent with the objective medical evidence, non-compliance with
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18 ⁶⁷ AR 25. *See Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir.
19 2015).

20 ⁶⁸ *Molina*, 674 F.3d at 1112.

21 ⁶⁹ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
22 F.3d at 1036).

1 medication and improvement with medication, inconsistent statements, and her
2 activities of daily living.⁷⁰

3 First, as to the ALJ's finding that Plaintiff's symptom reports were
4 inconsistent with the objective medical evidence, symptom reports cannot be solely
5 discounted on the grounds that they were not fully corroborated by the objective
6 medical evidence.⁷¹ However, objective medical evidence is a relevant factor in
7 considering the severity of the reported symptoms. ⁷² Here, the ALJ considered

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10 ⁷⁰ AR 25-26.

11 ⁷¹ See *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

12 ⁷² *Id.* "Objective medical evidence" means signs, laboratory findings, or both. 20
13 C.F.R. §§ 404.1502(f), 416.902(k). In turn, "signs" is defined as:

14 one or more anatomical, physiological, or psychological abnormalities
15 that can be observed, apart from [the claimant's] statements
16 (symptoms). Signs must be shown by medically clinical diagnostic
17 techniques. Psychiatric signs are medically demonstrable phenomena
18 that indicate specific psychological abnormalities, e.g., abnormalities
19 of behavior, mood, thought, memory, orientation, development, or
20 perception, and must also be shown by observable facts that can be
21 medically described and evaluated.

22 *Id.* §§ 404.1502(g), 416.902(l). Evidence obtained from the "application of a
23 medically acceptable clinical diagnostic technique, such as evidence of reduced joint
motion, muscle spasm, sensory deficits, or motor disruption" is considered objective
medical evidence. 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective
medical evidence (2019).

1 that the objective medical evidence revealed that Plaintiff's symptoms, including
2 difficulties sleeping, concentrating, fatigue, and confusion, waxed and waned—
3 waxing when Plaintiff did not take the prescribed medication. This was a relevant
4 factor for the ALJ to consider.

5 Second, as mentioned, the ALJ considered Plaintiff's noncompliance with
6 taking her medications and that when she complied her symptoms improved.⁷³
7 Both improvement with treatment and noncompliance with medical care are
8 relevant considerations for the ALJ when assessing Plaintiff's reported
9 symptoms.⁷⁴ Here, the record mentions Plaintiff stopping medication without first
10 discussing such with her provider.⁷⁵ And the ALJ noted that, when Plaintiff was
11 taking Cymbalta and Concerta, Dr. Barnard observed Plaintiff not to be especially
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14 ⁷³ AR 26.

15 ⁷⁴ *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599–600 (9th Cir. 1999)
16 (considering evidence of improvement); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.
17 1989).

18 ⁷⁵ See AR 377 (“Plaintiff has stopped all her medications.”); AR 418 (admitting she
19 stopped taking her psychotropic medication); AR 824 (indicating that she stopped
20 taking her medication due to side effects); AR 835 (same); AR 899 (noting that
21 Plaintiff stopped taking medication a year ago when she could no longer afford the
22 medication).
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1 anxious or depressed.⁷⁶ And notwithstanding that Plaintiff was often observed with
2 a depressed and anxious mood or blunted affect, the ALJ highlighted that Plaintiff
3 had largely normal mental status examinations when taking her medication, such
4 as being cooperative, with good eye-contact, orientated, coherent, and with good
5 insight and judgment.⁷⁷ That Plaintiff's symptoms waned when she consistently
6 took her medication is a clear and convincing reason, supported by substantial
7 evidence, to discount the reported more limiting symptoms.

8 Third, the ALJ discounted Plaintiff's mental-health statements because her
9 symptom reports were inconsistent.⁷⁸ An ALJ may discount a claimant's symptom
10 reports on the basis inconsistent statements.⁷⁹ Here, the ALJ noted that Plaintiff
11 reported that she was "over" her physical and emotional abuse, denied nightmares
12 or flashbacks, that she only sometimes felt anxious, that her anxiety comes out of
13 nowhere but only rarely (maybe two times a month).⁸⁰ That Plaintiff offered
14 inconsistent statements about the extent of her symptoms was a clear and
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16 ⁷⁶ AR 26 (citing AR 803).

17 ⁷⁷ *Id.* (citing AR 385, 418, 450, & 460).

18 ⁷⁸ AR 26.

19 ⁷⁹ *See Smolen*, 80 F.3d at 1284 (The ALJ may consider "ordinary techniques of
20 credibility evaluation," such as reputation for lying, prior inconsistent statements
21 concerning symptoms, and other testimony that "appears less than candid.").

22 ⁸⁰ AR 26 (citing AR 899).

1 convincing reason, supported by substantial evidence, to discount the more limiting
2 reported symptoms.

3 Finally, the ALJ discounted Plaintiff's symptom reports because they were
4 inconsistent with her activities of daily living."⁸¹ If a claimant can spend a
5 substantial part of the day engaged in pursuits involving the performance of
6 exertional or non-exertional functions, the ALJ may find these activities
7 inconsistent with the reported disabling symptoms.⁸² Here, the ALJ highlighted
8 that Plaintiff had no problems with personal care, shopped for groceries, prepared
9 simple meals, cleaned, vacuumed, mopped, washed dishes, did laundry, cared for
10 her four children (ages 13, 11, 5, and 6 months), and attended school in an effort to
11 obtain her GED.⁸³ While a different interpretation could be made as to whether
12 these activities are consistent with Plaintiff being able to sustain fulltime work, the
13 ALJ articulated several other supported grounds for discounting Plaintiff's
14 reported symptoms.⁸⁴ Plaintiff fails to establish the ALJ erred by discounting her
15 symptom reports.

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19 ⁸¹ AR 26.

20 ⁸² *Molina*, 674 F.3d at 1113.

21 ⁸³ AR 26 (citing AR 240-42 & 770).

22 ⁸⁴ *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163 (9th Cir. 2009).
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1 **D. Step Three (Listings): Plaintiff fails to establish error.**

2 Plaintiff contends the ALJ erred by failing to develop the record or to find
3 that Plaintiff's impairments did not meet or medically equal a listing. Plaintiff
4 argues the record reflects mental fog and disorientation, episodes of widespread
5 musculoskeletal pain, tiredness and fatigue, headaches, and borderline intellectual
6 functioning—symptoms the ALJ failed to consider at step-three—and that the ALJ
7 failed to order adequate psychological and physical testing.

8 Plaintiff fails to establish step-three error. The ALJ's listings findings must
9 be read in conjunction with the entire ALJ decision.⁸⁵ Here, the ALJ discussed the
10 medical records and medical opinions related to Plaintiff's impairments. The ALJ
11 reasonably found that Plaintiff did not have an impairment or combination of
12 impairments that met or medically equaled the severity of a listing. This record did
13 not necessitate further development by the ALJ.

14 **E. Steps Four and Five: Plaintiff fails to establish error.**

15 Plaintiff argues the ALJ erred at steps four and five because the vocational
16 expert's testimony was based on an incomplete hypothetical that failed to include
17 the opined off-task time, absenteeism, and need for a flexible schedule with
18 additional breaks. Plaintiff's argument is based entirely on her initial arguments
19 that the ALJ erred in considering the medical evidence (objective and opinions) and
20 Plaintiff's symptom reports. For the above-explained reasons, the ALJ's

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22 ⁸⁵ SSR 17-2p.

1 consideration of the medical evidence and Plaintiff's symptom reports were legally
 2 sufficient and supported by substantial evidence. The ALJ did not err in assessing
 3 the RFC or finding Plaintiff capable of performing past work and other work
 4 existing in the national economy.⁸⁶

5 V. Conclusion

6 Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.
- 8 2. The Commissioner's Motion for Summary Judgment, **ECF No. 13**, is
 9 **GRANTED**.
- 10 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.
- 11 4. The case shall be **CLOSED**.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and
 13 provide copies to all counsel.

14 **DATED** this 5th day of October 2020.

15
 16 s/Edward F. Shea
 EDWARD F. SHEA
 17 Senior United States District Judge

18
 19
 20 ⁸⁶ See *Magallanes v. Bowen*, 881 F.2d 747, 756–57 (9th Cir. 1989) (holding it is
 21 proper for the ALJ to limit a hypothetical to those restrictions supported by
 22 substantial evidence in the record).